

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KYLER H., a Minor, and)	
LOJWANNA M., Individually and)	
as Guardian and Next Friend of KYLER H. ,)	
)	08 C 1125
Plaintiffs,)	
)	
v.)	Judge Amy St. Eve
)	
BOARD OF EDUCATION OF THE)	
CITY OF CHICAGO, DISTRICT 299)	
)	
Defendant)	

**PLAINTIFFS' MOTION TO STRIKE DEFENDANT CHICAGO BOARD OF
EDUCATION'S OFFER OF JUDGMENT**

NOW COMES Lowjanna M. in her own capacity and as parent of Kyler H., by and through their attorney, Michael A. O'Connor, and move this Court to strike Defendant Chicago Board of Education's Offer of Judgment, and in support of their Motion, state as follows:

1. Defendant Board of Education served an Offer of Judgment, pursuant to Rule 68, FRCP, on Plaintiffs' counsel on March 8, 2008.
2. Defendant's counsel also filed the Offer of Judgment on March 8, 2008, which was inappropriate under the terms of Rule 68, FRCP.
3. Plaintiffs rejected the Defendant's Offer of Judgment by letter on March 24, 2008.
4. Rule 68 FRCP provides that an offer is to be filed only if accepted, and that evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

5. As Judge Shadur explained in *Kason v. Amphenol Corp.*, 132 F.R.D. 197 (N.D.Ill. 1990): "Rule 68 is really unambiguous -- its first sentence provides only for the service of offers of judgment on the adverse party, while its second sentence calls for filing of the offer only if the adverse party accepts it within ten days after such service. By strong negative inference, that latter reference to filing if and when the offer is accepted confirms the plain meaning of Rule 68's first sentence that no filing is permitted at the time of tender." *Id.*

6. In cases where an offer of judgment has been filed with the court at the same time it was extended to the opposing party, the appropriate corrective action is to strike the early filing. *See, Kason v. Amphenol Corp.*, 132 F.R.D. 197 (N.D.Ill. 1990); *Labuda v. Schmidt*, 2005 U.S. Dist. LEXIS 20948 (D. Ill. 2005); *Scheriff v Beck*, 452 F Supp 1254, 25 FR Serv 2d 1161(DC Colo., 1978); *Nabors v. Texas Co.*, 32 F. Supp. 91 (W.D. La. 1940).

WHEREFORE, Plaintiffs request an order directing the Clerk to strike from the record of this case the Defendant's Offer of Judgment that was filed on March 8, 2008.

Respectfully submitted,

March 24, 2008

S/
Michael A O'Connor,
Attorney for Plaintiffs

Michael A O'Connor
MAUK & O'CONNOR, LLP
1427 W. Howard St.
Chicago IL 60626-1426
(773)262-2199
Attorney No. 2088266